

SUMMARY MINUTES - MARCH 4, 2008

Public and Closed Session Location

Pasadena Hilton – Monterey Room

168 South Los Robles Avenue

Pasadena, CA 91101

BOARD MEETING MINUTES

March 4, 2008

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

MEMBERS PRESENT:

Sean Harrigan, President Anne Sheehan, Member Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER

- Suzanne M. Ambrose
- SSA Exam
 - There are a total of 3 Re-Employment Eligible candidates in Ranks 1, 2 & 3;
 - o There are a total of 18 veterans in Ranks 4, 5 & 6;
 - There are 1830 candidates in Rank 7.
- The Executive Officer attended UC Berkeley's Public Policy Career Fair on February 25th. New cards describing the SSA exam and careers that are possible in that classification were handed out at the career fair.

3. REPORT OF THE CHIEF COUNSEL

- Elise S. Rose
- Plata v. Schwarzenegger: SPB and the Receiver's Office have stipulated to extend time (until March 17th) within which the Receiver must file a reply to SPB's response to supplemental pleadings on the Receiver's motion to change the appeals process for physician discipline;
- The Fair Political Practices Commission's Form 700 will be distributed to the Board members today, and will include instructions for the Board members on how to access online ethics training.

4. REPORT ON LEGISLATION

- Elise S. Rose
- Assembly member Ed Hernandez is holding a hearing on "Exploring the Use of Personal Services Contracts for IT Services in State Government" on March 12th. SPB is an invited speaker;
- SPB's sponsored bills, AB 3042 and SB 1472, are in print and will likely be set for hearing in March.

5. NEW BUSINESS NONE

6. NOTIFICATION OF THE DUTIES OF PUBLIC OFFICIALS PURSUANT TO THE POLITICAL REFORM ACT (Gov. C §§ 8100 et seq.)

- Elise S. Rose

7. ORAL ARGUMENT

In the matter of **CASE NO. 05-3327A**. Appeal from dismissal. Medical Technical Assistant. Department of Corrections and Rehabilitation.

- Joe Barbara, Senior Staff Counsel, Department of Corrections & Rehabilitation, representing the department.
- Rudy Jansen, Supervising Legal Counsel, CCPOA, representing the appellant.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

8. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matters submitted at prior hearing. [Government Code Sections 11126(c)(3), 18653(3)].

9. DELIBERATION ON NON-EVIDENTIARY CASES AND ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by Administrative Law Judges of the State Personnel Board or by the Board itself.

[Government Code Sections 11126(c)(3), 18653].

10. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1), 18653].

California Highway Patrol, et al. v. State Personnel Board, et al.

Sacramento Superior Court

Case No. 34-2008-00002G14-CU-WM-GDS

<u>California Department Corrections and Rehabilitation, et al. v. State Personnel Board, et al.</u>

Sacramento Superior Court

Case No. 34-2007-00883875-CU-WM-GDS

Patrick McCollum v. State of California
United States District Court, Northern District of California
Case No. C 04-03339 CRB

Plata, et al. v. Schwarzenegger, et al. Case No. C01-1351 THE

11. RECOMMENDATIONS TO THE LEGISLATURE

NONE

12. RECOMMENDATIONS TO THE GOVERNOR

NONE

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

13. DISCUSSION OF UPCOMING BOARD MEETING SCHEDULED FOR MARCH 25, 2008, IN SACRAMENTO, CALIFORNIA.

NO ACTION

BOARD ACTIONS:

14. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF THE JANUARY 22, 2008 BOARD MEETING.

ACTION: ADOPTED

VOTE: Harrigan, Sheehan, Tom - Aye

15. ANNOUNCEMENT OF ACTION TAKEN ON EVIDENTIARY CASES

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

(1) CASE NO. 05-4007EA

Appeal from denial of discrimination complaint

Classification: Outside contractor

Department: Department of Transportation

Proposed decision rejected December 19, 2006. Pending oral argument April 3, 2007, Sacramento.

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Oral argument continued.
Oral argument heard July 10, 2007, Sacramento.
Case ready for decision by FULL Board.

NO ACTION

(2) CASE NO. 06-3014PA

Appeal from official reprimand

Classification: Correctional Sergeant

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted July 10, 2007.

Transcript prepared.

Pending oral argument October 9, 2007, Sacramento.

Oral argument continued.

Oral argument heard December 4, 2007, San Francisco.

Case ready for decision by FULL Board.

NO ACTION

(3) PSC No. 07-02, CASE NO. 07-003(b)

Appeal from Executive Officer's disapproval of Personal Services Contract for Janitorial Services

Department: Health Services

Petition for rehearing granted May 8, 2007.

Oral argument heard September 4, 2007, Sacramento.

Case ready for decision by FULL Board.

ACTION: The Board issued a decision affirming the Executive Officer's decision that approved the contract for three months.

(4) PSC No. 07-04

Appeal from Executive Officer's disapproval of Personal Services Contract for Psychological Services

Department: Department of Mental Health

Oral argument heard December 4, 2007, San Francisco. Case ready for decision by FULL Board.

ACTION: The Board issued a decision that disapproved the contracts, but delayed implementation of the disapproval for 90 days from the date of the Board's decision, due to public safety concerns.

B. <u>CASES PENDING</u>

ORAL ARGUMENTS

These cases will be argued at this meeting or will be considered by the Board in closed session based on written arguments submitted by the parties.

(1) CASE NO. 05-3327A

Appeal from dismissal

Classification: Medical Technical Assistant

Department: Department of Corrections and Rehabilitation

ACTION: SUBMITTED

C. CHIEF COUNSEL RESOLUTIONS

(1) CASE NO. 06-3665E

Appeal from Denial of Discrimination Complaint **Classification**: Business Taxes Representative

Department: Board of Equalization

ACTION: The Board issued a Resolution approving the stipulation for settlement entered into between appellant and the State Board of Equalization, without expressing any opinion as to the propriety of any of the stipulation's terms that are not within the Board's jurisdiction.

(2) CASE NOS. 98-4118B & 99-0772B

Appeal from denial of reasonable accommodation

Classification: Institution Artist, Facilitator

Department: Department of Corrections and Rehabilitation

ACTION: Resolution withdrawn by staff.

(3) RESOLUTION FROM THE STATE PERSONNEL BOARD

The State Personnel Board is requesting the adoption of a Resolution regarding the Receiver's Request for Delegation of Specified State Personnel Board Functions.

ACTION: The Board adopted the Resolution.

COURT REMANDS

These cases have been remanded to the Board by the court for further Board action.

NONE

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STIPULATIONS

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. <u>ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS</u>

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

PROPOSED DECISIONS

These are ALJ proposed decisions submitted to the Board for the first time.

(1) CASE NO. 07-1958

Appeal from rejection during probation

Classification: Motor Vehicle Field Representative

Department: Department of Motor Vehicles

ACTION: The Board adopted the ALJ's proposed decision.

(2) CASE NO. 06-4434E

Appeal from denial of discrimination complaint and whistleblower

retaliation

Classification: Painter II

Department: Department of Corrections and Rehabilitation **ACTION:** The Board adopted the ALJ's proposed decision.

(3) CASE NO. 06-4268

Appeal from dismissal

Classification: Business Service Officer I (Supervisor)

Department: Department of Water Resources

ACTION: The Board adopted the ALJ's proposed decision.

(4) CASE NO. 06-3598

Appeal from dismissal

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation **ACTION:** The Board adopted the ALJ's proposed decision.

(5) CASE NO. 07-2189

Appeal from non-punitive termination

Classification: Vocational Instructor (Welding)

Department: Department of Corrections and Rehabilitation

ACTION: The Board rejected the Proposed Decision and ordered

the case scheduled for oral argument before the Board.

PROPOSED DECISIONS TAKEN UNDER SUBMISSION AT A PRIOR MEETING

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

(6) CASE NO. 05-4211R

Appeal from ten percent reduction in salary for 12 months

Classification: Parole Agent I

Department: Department of Corrections and Rehabilitation **ACTION:** The Board adopted the ALJ's proposed decision.

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. <u>PETITIONS FOR REHEARING</u>

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

NONE

WHISTLEBLOWER NOTICE OF FINDINGS

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case previously decided pursuant to Government Code, section 19683 <u>et seq</u>. and Title 2, California Code of Regulations, section 56 <u>et seq</u>.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

(1) CASE NO. 07-0850A

Appeal from non-punitive termination Classification: Clinical Social Worker

Department: Department of Corrections and Rehabilitation

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Proposed decision rejected September 24, 2007.

Transcript prepared.

Oral argument set for February 4-5, 2008, Sacramento.

Oral argument continued.

Oral argument set for March 3-4, 2008, Los Angeles.

Oral argument continued.

Oral argument set for April 7, 2008, Sacramento.

NO ACTION

(2) CASE NO. 05-3327A

Appeal from dismissal

Classification: Medical Technical Assistant

Department: Department of Corrections and Rehabilitation

Proposed decision rejected July 10, 2007.

Transcript prepared.

Oral argument set for February 4-5, 2008, Sacramento.

Oral argument continued.

Oral argument set for March 3-4, 2008, Los Angeles.

NO ACTION

(3) CASE NO. 06-3747A

Appeal from dismissal

Classification: Parole Agent I

Department: Department of Corrections and Rehabilitation

Proposed decision rejected January 8, 2008.

Transcript prepared.

NO ACTION

16. RESOLUTION EXTENDING TIME PURSUANT TO GOVERNMENT CODE SECTION 18671.1

ACTION: ADOPTED

VOTE: Harrigan, Sheehan, Tom – Aye

17. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

<u>WITHHOLD FROM CERTIFICATION</u> CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION CASES NOT HEARD BY A STAFF HEARING OFFICER

(1) CASE NO. 06-2357N

Classification: Correctional Officer

Department: California Department of Corrections and Rehabilitation

Issue: Suitability; use of oral anabolic steroids and termination from employment within eight months of participating in the peace officer selection process.

ACTION: The Board remanded the case with instructions to provide greater clarification as to whether appellant purchased and ingested illegal steroids.

(2) CASE NO. 06-3466N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; illegal drug use.

ACTION: DENIED

(3) CASE NO. 06-3474N

Classification: Correctional Officer

Department: California Department of Corrections and Rehabilitation

Issue: Suitability: negative law enforcement contacts.

ACTION: DENIED

(4) CASE NO. 06-3565N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; negative law enforcement contacts.

ACTION: DENIED

(5) CASE NO. 06-2721N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; illegal drug use.

ACTION: DENIED

(6) CASE NO. 06-4672N

Classification: Correctional Officer

Department: California Department of Corrections and Rehabilitation **Issue:** Suitability; termination from employment within one year of

applying to the CDCR. **ACTION: DENIED**

(7) CASE NO. 06-4171N

Classification: Associate Governmental Program Analyst

Department: Department of Health Services **Issue:** Suitability; minimum qualifications.

ACTION: The Board granted appellant's appeal

(8) CASE NO. 06-4117N

Classification: Associate Governmental Program Analyst

Department: Department of Health Services **Issue:** Suitability; minimum qualifications. **ACTION:** The Board granted appellant's appeal

(9) CASE NO. 06-3508N

Classification: Correctional Officer

Department: California Department of Corrections and Rehabilitation

Issue: Suitability; failure to provide honest and accurate

information in his PHS. **ACTION: DENIED**

(10) CASE NO. 06-4442N

Classification: Associate Governmental Program Analyst

Department: Department of Social Services **Issue:** Suitability; minimum qualifications.

ACTION: The Board granted appellant's appeal

(11) CASE NO. 06-4546N

Classification: Correctional Officer

Department: California Department of Corrections & Rehabilitation

Issue: Illegal drug use.

ACTION: The Board granted appellant's appeal

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

NONE

DISMISSED CASES

CASE NO. 07-1330N
 Classification: Cadet

Department: California Highway Patrol

CASE NO. 07-3383N

Classification: Correctional Officer

Department: California Department of Corrections &

Rehabilitation

C. <u>EXAMINATION APPEALS, MINIMUM QUALIFICATIONS, MERIT ISSUE</u> <u>COMPLAINTS</u>

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

NONE

D. RULE 211 APPEALS, RULE 212 OUT OF CLASS APPEALS, VOIDED APPOINTMENT APPEALS

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

(1) CASE NO. 06-0012N

Classification: Maintenance Supervisor Department: Department of Transportation

Issue: The charging party requests to file charges for violations of

various subsections of Government Code §19572.

ACTION: The Board adopted the staff recommendation, except for

the first paragraph on the Analysis.

PETITIONS FOR REHEARING CASES

NONE

18. NON-HEARING CALENDAR

On March 4, 2008, the following proposals were presented to the Board by Elise S. Rose, Chief Counsel, California State Personnel Board.

A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH, REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE CRITERIA, ETC.

CHIEF EXECUTIVE OFFICER, HEALTH CARE (SAFETY), DEPARTMENT OF CORRECTIONS AND REHABILITATION

The Department of Corrections and Rehabilitation proposes to establish a new safety classification, Chief Executive Officer, Health Care (Safety), with a one year probationary period.

ACTION: ADOPTED

VOTE: Harrigan, Sheehan, Tom - Aye

B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE CLASS AS WELL AS THE APPROPRIATE UNION HAVE NO OBJECTION TO THE ABOLISHMENT OF THESE CLASSES.

NONE

19. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

- 20. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY
 - A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION

PROJECT MANAGER, WORKFORCE MANAGEMENT, HR MODERNIZATION PROJECT

The Department of Personnel Administration proposes to allocate the above position to the CEA category. The position will be responsible for, or participate in the development and management of the project plan and deliverables for the workforce planning, performance management, training, and change management components of the project; ensuring integration with the other project components. Position is a high administrative and policy-influencing position and will be highly visible and subject to media and legislative attention.

ASSOCIATE DIRECTOR, HUMAN RESOURCES

The Department of Corrections and Rehabilitation proposes to allocate the above position to the CEA category. The position provides and directs the uniform implementation of departmental policy and procedures impacting human resources operations. The Associate Director provides leadership and guidance for HR's component of the Department's Strategic Plan and performance management system.

FISCAL PROJECT EXECUTIVE

The Financial Information System for California (FI\$Cal) proposes to allocate the above position to the CEA category. The position fulfills substantial leadership and policy setting responsibilities for a project of significant scope, complexity and sensitivity. The FI\$Cal Project will transform the budgeting, accounting, and procurement functions of all state departments.

PRESIDING ADMINISTRATIVE LAW JUDGE

The State Personnel Board proposes to allocate the above position to the CEA category. Under general direction of the Chief Administrative Law Judge of the State Personnel Board, will plan, coordinate, and manage the work of the Administrative Law Judges of the State Personnel Board in conducting hearings and other proceedings within the Appeals function of the State Personnel Board.

CHIEF, OFFICE OF POLLUTION PREVENTION AND TECHNOLOGY DEVELOPMENT

The Department of Toxic Substances Control proposes to allocate the above position to the CEA category. The position will plan, organize, and direct the activities of the Office of Pollution Prevention and Technology Development. The position is part of the executive management team which will develop policy for three major statewide program areas.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

PROJECT MANAGER, ENTERPRISE TRANSITION MANAGEMENT PROJECT

The Public Employees' Retirement System's request to allocate the above position has been approved effective January 30, 2008.

CHIEF, IN-PRISON PROGRAMS AND SUPPORT

The Department of Corrections and Rehabilitation's request to allocate the above position has been approved effective January 30, 2008.

DEPUTY DIRECTOR

The California High-Speed Rail Authority's request to allocate the above position has been approved effective January 31, 2008.

ASSISTANT DEPUTY DIRECTOR, OFFICE OF HEALTH PLAN OVERSIGHT

The Department of Managed Health Care's request to allocate the above position has been approved effective January 10, 2008.

ASSISTANT EXECUTIVE DIRECTOR, SALINAS VALLEY PSYCHIATRIC PROGRAM

The Department of Mental Health's request to allocate the above position has been approved effective February 4, 2008.

ACTION: NOTED

21. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

22. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

NONE

23. BOARD ACTIONS ON SUBMITTED ITEMS

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting.

SUBMITTED

(1) PERSONAL SERVICES CONTRACT NO. 04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

(2) CASE NO. 05-4007EA

Appeal from denial of discrimination complaint. Outside contractor. Department of Transportation. (Oral argument held July 10, 2007.)

(3) CASE NO. 06-3014PA. Appeal from official reprimand. Correctional Sergeant. Department of Corrections and rehabilitation. (Oral argument held on December 4, 2007.) Minutes – Page 9 March 4, 2008

(4) CASE NO. 05-3327A

Appeal from dismissal. Medical Technical Assistant. Department of Corrections and Rehabilitation. (Oral argument held on March 4, 2008.)

24. STRATEGIC PLANNING SESSION

- California State Personnel Board Staff

ADJOURNMENT

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting held on March 4, 2008.

VOTE: Harrigan, Sheehan, Tom - Aye

Suzanne M. Ambrose

Executive Officer

California State Personnel Board